

Senate Engrossed

FILED

**KEN BENNETT
SECRETARY OF STATE**

State of Arizona
Senate
Fiftieth Legislature
Second Regular Session
2012

CHAPTER 64

SENATE BILL 1135

AN ACT

AMENDING SECTIONS 15-1025, 35-313, 35-323 AND 35-323.01, ARIZONA REVISED
STATUTES; RELATING TO PUBLIC FUNDS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 15-1025, Arizona Revised Statutes, is amended to
3 read:

4 15-1025. Investment and reinvestment of debt service fund

5 A. The governing board of a school district may invest and reinvest
6 all monies belonging or credited to the school district as a debt service
7 fund. Consent may be requested prior to the beginning of any fiscal year for
8 the adoption of a resolution of continuing effect. The investment shall be
9 made for the best interests of the school district.

10 B. The funds may be invested and reinvested in any of the following:

11 1. Bonds or other evidences of indebtedness of the United States of
12 America or any of its agencies or instrumentalities when such obligations are
13 guaranteed as to principal and interest by the United States of America or by
14 any agency or instrumentality thereof.

15 2. Bonds or other evidences of indebtedness of this state, or of any
16 of the counties or incorporated cities, towns or school districts of this
17 state.

18 3. Bonds, notes or evidences of indebtedness of any county,
19 municipality or municipal district utility within this state, which are
20 payable from revenues or earnings specifically pledged for the payment of the
21 principal and interest on such obligations, and for the payment of which a
22 lawful debt service fund or reserve fund has been established and is being
23 maintained, but only if no default in payment of principal or interest on the
24 obligations to be purchased has occurred within five years of the date of
25 investment therein or, if such obligations were issued less than five years
26 prior to the date of investment, no default in payment of principal or
27 interest has occurred on the obligations to be purchased, nor on any other
28 obligations of the issuer within five years of such investment.

29 4. Bonds, notes or evidences of indebtedness issued by any municipal
30 improvement district in this state to finance local improvements authorized
31 by law, if the principal and interest of such obligations are payable from
32 assessments on real property within such local improvement district. No such
33 investment shall be made if the face value of all such obligations and
34 similar obligations outstanding exceeds fifty per cent of the market value of
35 the real property and improvements upon which such bonds or the assessments
36 for the payment of principal and interest thereon are liens inferior only to
37 the liens for general ad valorem property taxes. Such investment shall be
38 made only if no default in payment of principal or interest on the
39 obligations to be purchased has occurred within five years of the date of
40 investment therein or, if such obligations were issued less than five years
41 prior to the date of investment, no default in payment of principal or
42 interest has occurred on the obligations to be purchased, nor on any other
43 obligation of the issuer within five years of such investment.

1 5. Interest bearing savings accounts or certificates of deposit
2 insured in banks or savings and loan associations doing business in Arizona
3 by the federal deposit insurance corporation, but only if they are secured by
4 the depository to the same extent and in the same manner as required by the
5 general depository law of this state. Security shall not be required for
6 that portion of any deposit that is insured under any law of the United
7 States.

8 6. Bonds, debentures or other obligations issued by the federal land
9 banks, the federal intermediate credit banks or the banks for cooperatives.

10 7. ~~Interest bearing certificates of deposit purchased~~ DEPOSITS PLACED
11 in accordance with the procedures prescribed in section 35-323.01.

12 C. The purchase of the securities shall be made by the county
13 treasurer or the treasurer's designated agent upon authority of a resolution
14 of the governing board. The county treasurer shall be the custodian of all
15 securities so purchased. The securities may be sold upon an order of the
16 governing board.

17 D. All monies earned as interest or otherwise derived by virtue of the
18 provisions of this section shall be credited to the debt service fund.

19 Sec. 2. Section 35-313, Arizona Revised Statutes, is amended to read:

20 35-313. Investment of trust and treasury monies; loan of
21 securities

22 A. The state treasurer shall invest and reinvest trust and treasury
23 monies in any of the following items:

24 1. Obligations issued or guaranteed by the United States or any of its
25 agencies, sponsored agencies, corporations, sponsored corporations or
26 instrumentalities.

27 2. Collateralized repurchase agreements purchased from securities
28 dealers that make markets in those securities listed in paragraph 1 of this
29 subsection.

30 3. Bonds or other evidences of indebtedness of this state or any of
31 the counties or incorporated cities, towns or duly organized school
32 districts.

33 4. Commercial paper whose issuer is rated in one of the two highest
34 rating categories for short-term obligations by any two nationally recognized
35 statistical rating organizations.

36 5. Bills of exchange or time drafts known as bankers acceptances that
37 are drawn on and accepted by a commercial bank.

38 6. Negotiable certificates of deposit issued by a nationally or state
39 chartered bank or savings and loan association.

40 7. Bonds, debentures, notes or other evidences of indebtedness that
41 are issued by entities organized and doing business in the United States and
42 that carry as a minimum one of the Baa ratings of Moody's investors service
43 or one of the BBB ratings of Standard and Poor's rating service or their
44 successors.

1 8. Securities of or any other interests in any open-end or closed-end
2 management type investment company or investment trust, including exchange
3 traded funds whose underlying investments are invested in securities allowed
4 by state law, registered under the investment company act of 1940 (54 Stat.
5 789; 15 United States Code sections 80a-1 through 80a-64), as amended. For
6 any treasurer investment pool that seeks to maintain a constant share price,
7 both of the following apply:

8 (a) The investment company or investment trust takes delivery of the
9 collateral for any repurchase agreement either directly or through an
10 authorized custodian.

11 (b) The investment policy of the investment company or investment
12 trust includes seeking to maintain a constant share price.

13 9. Certificates of deferred property taxes as provided by section
14 42-17309.

15 10. Treasurer's warrant notes issued pursuant to section 35-185.01 or
16 registered warrants of a county issued pursuant to section 11-605, if the
17 yield is equal to or greater than yields on eligible investment instruments
18 of comparable maturities.

19 11. Shares in the treasurer's local government investment pools
20 pursuant to section 35-326 provided that investment policies of the pool seek
21 to maintain a constant share price.

22 12. Shares in the treasurer's long-term local government investment
23 pools, which terms are determined by the state board of investment, pursuant
24 to section 35-326.01.

25 13. Subject to subsection D of this section, state transportation board
26 funding obligations delivered pursuant to section 28-7678.

27 14. ~~Certificates of deposit purchased~~ DEPOSITS PLACED in accordance
28 with the procedures prescribed in section 35-323.01.

29 B. In case of default or failure to honor a county treasurer's
30 warrant, the state treasurer may withhold the first state shared revenues
31 that would otherwise be distributed to the defaulting county in the amount
32 necessary to honor the note, including accrued interest to and beyond the
33 date of default.

34 C. The state treasurer may contract to loan securities owned by the
35 trust funds and operating monies deposited in the investment pools pursuant
36 to section 35-316, subsection B to the financial or dealer community through
37 one or more of the entities listed in section 35-317, subsection A, or
38 authorized by the board of investment pursuant to section 35-311, subsection
39 E, if the borrower transfers collateral to the state treasurer or acting
40 agent of the state in the form of cash or securities specified in subsection
41 A of this section. Collateral posted in the form of cash shall be in an
42 amount equal to at least one hundred per cent of the market value of the
43 loaned securities as agreed. Collateral posted in the form of securities
44 shall be in an amount of no more than one hundred ten per cent of the market
45 value of the loaned securities as established from time to time by the board

1 of investment. The loaned securities shall be valued as to market value
2 daily, and, if necessary, the borrower shall post additional collateral, as
3 agreed, to ensure that the required margin is maintained. The state
4 treasurer may collect from the borrower all dividends, interest, premiums,
5 rights and other distributions to which the lender of securities would
6 otherwise be entitled. The state treasurer may terminate the contract on not
7 less than five business days' notice, as agreed, and the borrower may
8 terminate the contract on not less than two business days' notice, as agreed.

9 D. The state treasurer shall invest operating monies in state
10 transportation board funding obligations delivered pursuant to section
11 28-7678 pursuant to the following:

12 1. The state treasurer shall liquidate investments of operating monies
13 if necessary in order to invest in state transportation board funding
14 obligations, except that if operating monies in the state general fund fall
15 below an eight hundred million dollar average over the previous twelve
16 consecutive months, the state treasurer is not required to purchase state
17 transportation board funding obligations pursuant to this subsection.

18 2. Each series of state transportation board funding obligations shall
19 bear interest at a fixed interest rate equal to the mean bid-ask price of the
20 United States treasury obligation with a maturity date closest to the
21 maturity date of the state transportation board funding obligation as
22 published most recently in the Wall Street Journal before the date the state
23 treasurer receives a certificate from the state transportation board that
24 states the board's determination to deliver an obligation to the state
25 treasurer and the anticipated delivery date of the obligation. The delivery
26 date shall be between fifteen and sixty days after the day the state
27 treasurer receives the certificate.

28 3. The state treasurer shall provide written notice to the state
29 transportation board and the director of the department of transportation
30 when the operating monies fall below four hundred million dollars. If
31 operating monies fall below two hundred million dollars, the state treasurer
32 may call the investment in the state transportation board funding obligations
33 in twenty-five million dollar increments up to the amount that the operating
34 monies are below two hundred million dollars. The state treasurer shall give
35 the state transportation board and the director of the department of
36 transportation at least fifteen days' notice of the call.

37 Sec. 3. Section 35-323, Arizona Revised Statutes, is amended to read:

38 35-323. Investing public monies; bidding; security and other
39 requirements

40 A. The treasurer shall invest and reinvest public monies in securities
41 and deposits with a maximum maturity of five years. All public monies shall
42 be invested in eligible investments. Eligible investments are:

43 1. Certificates of deposit in eligible depositories.

1 2. ~~Certificates of deposit~~ DEPOSITS in one or more federally insured
2 banks or savings and loan associations PLACED in accordance with the
3 procedures prescribed in section 35-323.01.

4 3. Interest bearing savings accounts in banks and savings and loan
5 institutions doing business in this state whose accounts are insured by
6 federal deposit insurance for their industry, but only if deposits in excess
7 of the insured amount are secured by the eligible depository to the same
8 extent and in the same manner as required under this article.

9 4. Repurchase agreements with a maximum maturity of one hundred eighty
10 days.

11 5. The pooled investment funds established by the state treasurer
12 pursuant to section 35-326.

13 6. Obligations issued or guaranteed by the United States or any of the
14 senior debt of its agencies, sponsored agencies, corporations, sponsored
15 corporations or instrumentalities.

16 7. Bonds, notes or other evidences of indebtedness of this state or
17 any of its counties, incorporated cities or towns or school districts.

18 8. Bonds, notes or evidences of indebtedness of any county, municipal
19 district, municipal utility or special taxing district of any state that are
20 payable from revenues, earnings or a special tax specifically pledged for the
21 payment of the principal and interest on the obligations, and for the payment
22 of which a lawful sinking fund or reserve fund has been established and is
23 being maintained, but only if no default in payment on principal or interest
24 on the obligations to be purchased has occurred within five years of the date
25 of investment, or, if such obligations were issued less than five years
26 before the date of investment, no default in payment of principal or interest
27 has occurred on the obligations to be purchased nor any other obligations of
28 the issuer within five years of the investment.

29 9. Bonds, notes or evidences of indebtedness issued by any county
30 improvement district or municipal improvement district of any state to
31 finance local improvements authorized by law, if the principal and interest
32 of the obligations are payable from assessments on real property within the
33 improvement district. An investment shall not be made if:

34 (a) The face value of all such obligations, and similar obligations
35 outstanding, exceeds fifty per cent of the market value of the real property,
36 and if improvements on which the bonds or the assessments for the payment of
37 principal and interest on the bonds are liens inferior only to the liens for
38 general ad valorem taxes.

39 (b) A default in payment of principal or interest on the obligations
40 to be purchased has occurred within five years of the date of investment, or,
41 if the obligations were issued less than five years before the date of
42 investment, a default in the payment of principal or interest has occurred on
43 the obligations to be purchased or on any other obligation of the issuer
44 within five years of the investment.

1 10. Commercial paper of prime quality that is rated within the top two
2 ratings by a nationally recognized rating agency. All commercial paper must
3 be issued by corporations organized and doing business in the United States.

4 11. Bonds, debentures and notes that are issued by corporations
5 organized and doing business in the United States and that are rated within
6 the top three ratings by a nationally recognized rating agency.

7 12. Negotiable or brokered certificates of deposit issued by a
8 nationally or state chartered bank or savings and loan association.

9 13. Securities of or any other interests in any open-end or closed-end
10 management type investment company or investment trust, including exchange
11 traded funds whose underlying investments are invested in securities allowed
12 by state law, registered under the investment company act of 1940 (54 Stat.
13 789; 15 United States Code sections 80a-1 through 80a-64), as amended.

14 B. Certificates of deposit shall be purchased from the eligible
15 depository bidding the highest permissible rate of interest. No monies over
16 one hundred thousand dollars may be awarded at any interest rate less than
17 one hundred three per cent of the equivalent bond yield of the offer side of
18 United States treasury bills having a similar term. If the eligible
19 depository offering to pay the highest rate of interest has bid only for a
20 portion of the monies to be awarded, the remainder of the monies shall be
21 awarded to eligible depositories bidding the next highest rates of interest.

22 C. An eligible depository is not eligible to receive total aggregate
23 deposits from this state and all its subdivisions in an amount exceeding
24 twice its capital structure as outlined in the last call of condition of the
25 superintendent of financial institutions.

26 D. If two or more eligible depositories submit bids of an identical
27 rate of interest for all or any portion of the monies to be deposited, the
28 award of the deposit of the monies shall be made to the eligible depository
29 among those submitting identical bids having, at the time of the bid opening,
30 the lowest ratio of total public deposits in relation to its capital
31 structure.

32 E. Each bid submitted, and not withdrawn prior to the time specified,
33 constitutes an irrevocable offer to pay interest as specified in the bid on
34 the deposit, or portion bid for, and the award of a deposit in accordance
35 with this section obligates the depository to accept the deposit and pay
36 interest as specified in the bid pursuant to which the deposit is awarded.

37 F. The treasurer shall maintain a record of all bids received and
38 shall make available to the board of deposit at its next regularly scheduled
39 meeting a correct list showing the bidders, the bids received and the amount
40 awarded. These records shall be available to the public and shall be kept in
41 the possession of the treasurer for not less than two years from the date of
42 the report.

1 G. Any eligible depository, before receiving a deposit in excess of
2 the insured amount under this article, shall deliver collateral for the
3 purposes of this subsection equal to at least one hundred one per cent of the
4 deposit. The collateral shall be any of the following:

5 1. A bond executed by a surety company that is approved by the
6 treasury department of the United States and authorized to do business in
7 this state. The bond shall be approved as to form by the legal advisor of
8 the treasurer.

9 2. Securities or instruments of the following character:

10 (a) United States government or agency obligations.

11 (b) State, county, school district and other district municipal bonds.

12 (c) Registered warrants of this state, a county or other political
13 subdivisions of this state, when offered as security for monies of the state,
14 county or political subdivision by which they are issued.

15 (d) First mortgages and trust deeds on improved, unencumbered real
16 estate located in this state. No single first mortgages or trust deeds may
17 represent more than ten per cent of the total collateral. The treasurer may
18 require that the first mortgages or trust deeds comprising the total
19 collateral security be twice the amount the eligible depository receives on
20 deposit. First mortgages or trust deeds qualify as collateral subject to the
21 following limitations:

22 (i) The promissory note or other evidences of indebtedness secured by
23 such first mortgage or trust deed shall have been in existence for at least
24 three years and shall not have been in default during this period.

25 (ii) An eligible depository shall at its own expense execute, deposit
26 with the treasurer and record with the appropriate county recorder a complete
27 sale and assignment with recourse in a form approved by the attorney general,
28 together with an unconditional assumption of obligation to promptly pay to
29 the entitled parties public monies in its custody upon lawful demand and
30 tender of resale and assignment.

31 Eligible depositories may deposit the security described in this subdivision
32 with the state treasurer, and county, city or town treasurers may accept the
33 security described in this subdivision at their option.

34 3. The safekeeping receipt of a federal reserve bank or any bank
35 located in a reserve city, or any bank authorized to do business in this
36 state, whose combined capital, surplus and outstanding capital notes and
37 debentures on the date of the safekeeping receipt are ten million dollars or
38 more, evidencing the deposit therein of any securities or instruments
39 described in this section. A safekeeping receipt shall not qualify as
40 security, if issued by a bank to secure its own public deposits, unless
41 issued directly through its trust department. The safekeeping receipt shall
42 show upon its face that it is issued for the account of the treasurer and
43 shall be delivered to the treasurer. The safekeeping receipt may provide for
44 the substitution of securities or instruments which qualify under this
45 section with the affirmative act of the treasurer.

1 H. The securities, instruments or safekeeping receipt for the
2 securities, instruments or warrants shall be accepted at market value if not
3 above par, and, if at any time their market value becomes less than the
4 deposit liability to that treasurer, additional securities or instruments
5 required to guarantee deposits shall be deposited immediately with the
6 treasurer who made the deposit and deposited by the eligible depository in
7 which the deposit was made.

8 I. The condition of the surety bond, or the deposit of securities,
9 instruments or a safekeeping receipt, must be such that the eligible
10 depository will promptly pay to the parties entitled public monies in its
11 custody, upon lawful demand, and will, when required by law, pay the monies
12 to the treasurer making the deposit.

13 J. Notwithstanding the requirements of this section, any institution
14 qualifying as an eligible depository may accept deposits of public monies to
15 the total then authorized insurance of accounts, insured by federal deposit
16 insurance, without depositing a surety bond or securities in lieu of the
17 surety bond.

18 K. An eligible depository shall report monthly to the treasurer the
19 total deposits of that treasurer and the par value and the market value of
20 any pledged collateral securing those deposits.

21 L. When a security or instrument pledged as collateral matures or is
22 called for redemption, the cash received for the security or instrument shall
23 be held in place of the security until the depository has obtained a written
24 release or provided substitute securities or instruments.

25 M. The surety bond, securities, instruments or safekeeping receipt of
26 an eligible depository shall be deposited with the treasurer making the
27 deposit, and the treasurer shall be the custodian of the bond, securities,
28 instruments or safekeeping receipt. The treasurer may then deposit with the
29 depository public monies then in the treasurer's possession in accordance
30 with this article, but not in an amount in excess of the surety bond,
31 securities, instruments or safekeeping receipt deposited, except for federal
32 deposit insurance.

33 N. The following restrictions on investments are applicable:

34 1. An investment of public operating fund monies shall not be invested
35 for a maturity of longer than five years.

36 2. The board of deposit may order the treasurer to sell any of the
37 securities, and any order shall specifically describe the securities and fix
38 the date upon which they are to be sold. Securities so ordered to be sold
39 shall be sold for cash by the treasurer on the date fixed in the order, at
40 the then current market price. The treasurer and the members of the board
41 are not accountable for any loss occasioned by sales of securities at prices
42 lower than their cost. Any loss or expense shall be charged against earnings
43 received from investment of public funds.

1 0. If the total amount of subdivision monies available for deposit at
2 any time is less than one hundred thousand dollars, the subdivision board of
3 deposit shall award the deposit of the funds to an eligible depository in
4 accordance with an ordinance or resolution of the governing body of the
5 subdivision.

6 Sec. 4. Section 35-323.01, Arizona Revised Statutes, is amended to
7 read:

8 35-323.01. Investment of government monies in deposits;
9 conditions; definition

10 A. If an investing entity invests in ~~certificates of deposit~~ DEPOSITS
11 pursuant to section 9-492, subsection C, section 15-1025, subsection B,
12 paragraph 7, section 35-313, subsection A, paragraph 14 or section 35-323,
13 subsection A, paragraph 2, the investing entity in each case shall invest
14 those monies in accordance with all of the following conditions:

15 1. The monies are initially invested through an eligible depository in
16 this state selected by the investing entity.

17 2. The selected eligible depository arranges for the deposit of the
18 monies in ~~certificates of deposit~~ in one or more federally insured banks or
19 savings and loan associations wherever located, for the account of the
20 investing entity.

21 3. The full amount of principal and any accrued interest of each
22 ~~certificate of~~ SUCH deposit is insured by the federal deposit insurance
23 corporation.

24 4. The selected eligible depository acts as custodian for the
25 investing entity with respect to ~~the certificates of deposit issued for its~~
26 ~~account~~ SUCH DEPOSITS.

27 5. ~~At the same time~~ ON THE SAME DATE that the investing entity's
28 monies are deposited ~~and the certificates of deposit are issued~~ PURSUANT TO
29 PARAGRAPH 2 OF THIS SUBSECTION, the selected eligible depository receives an
30 amount of FEDERALLY INSURED deposits from customers of other ~~federally~~
31 ~~insured~~ financial institutions equal to or greater than the amount of the
32 monies initially invested by the investing entity through the selected
33 eligible depository.

34 B. Monies invested in accordance with all of the conditions prescribed
35 in this section are not subject to any security or collateral requirements.

36 C. For the purposes of this section, "investing entity" means this
37 state, a political subdivision, the governing body of a municipality or the
38 governing body of a school district.

APPROVED BY THE GOVERNOR MARCH 21, 2012.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 22, 2012.

Passed the House March 19, 2012,

by the following vote: 58 Ayes,

0 Nays, 2 Not Voting

Ken M. To
Speaker of the House

Cheryl Laube
Chief Clerk of the House

Passed the Senate February 2, 2012,

by the following vote: 89 Ayes,

0 Nays, 1 Not Voting

Steve Pearce LV
President of the Senate

Charmian Bellington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

20 day of March, 2012,

at 10 o'clock A M.

[Signature]
Secretary to the Governor

Approved this 21st day of

March, 2012,

at 1:47 o'clock P. M.

Janice K. Brewer
Governor of Arizona

S.B. 1135

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State
this 22nd day of March, 2012,

at 8:14 o'clock a M.

Kela Blumett
Secretary of State